

**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT,
KARKARDOOMA COURTS: DELHI**

CNR No. DLNE01-000454-2021
SC No. 45/21
State v. Mohd. Shahnawaz etc.
FIR No. 142/20
PS Gokalpuri

09.10.2023

**ORDER ON ACCEPTABILITY OF SUPPLEMENTARY
CHARGESHEET**

Vide this order, I shall decide the acceptability of latest supplementary chargesheet i.e. supplementary chargesheet no.2 as filed by ASI Gajraj Singh on 25.09.2023.

1. Through this supplementary chargesheet ASI Gajraj Singh filed copy of complaint as made by one Rinku, sanction accorded u/s. 196 Cr.P.C., site plan in respect of place of incident allegedly taken place with Rinku, copy of DD No.25-B and duty roster both dated 24.02.2020 and statement recorded u/s. 161 Cr.P.C. of Rinku, Ct. Sarnam and W/SI Deepika.
2. The objection was raised by ld. defence counsels regarding filing of this supplementary chargesheet at this stage and hence, submissions were heard from both the parties on the point of acceptability of this supplementary chargesheet. Ld. defence counsels submitted that this supplementary chargesheet was filed without any permission from the court. It was argued that even u/s. 173(8) Cr.P.C., further investigation could not have been

done and a supplementary chargesheet could not be filed without permission of the court.

3. Per contra, ld. Special PP argued that the court has the power to grant permission u/s. 173(8) Cr.P.C. He further submitted that in the first chargesheet itself it was mentioned that complaint of Rinku was clubbed in this case for investigation. But despite making sincere efforts he could not be contacted and therefore, it was mentioned in the chargesheet that a supplementary chargesheet would be filed whenever any contact could be made with complainant Rinku. Ld. Special PP further submitted that if IO would not have investigated the complaint of Rinku, then justice would not have been done to that complainant. Therefore, it was necessary to file this supplementary chargesheet.
4. I have given due consideration to the rival contentions. During the course of submissions both the parties were invited to submit any case law in support of their contentions. Ld. Special PP placed reliance upon the judgment passed by High Court of Delhi in the case of **State v. Mohd. Qasim & Ors. CrI. M.A. 3810/2023** decided on 28.03.2023. He referred to following observations as made in that case: -

38. Though, the Court could have passed a direction order for expeditious investigation and the slow investigation in the present case could have been asked to be expedited however, the fact remains that the right of the prosecuting agency as the law stands today, does not bar filing of supplementary chargesheets, especially in cases where the previous chargesheet already mentions the prayer of the prosecuting agency that investigation is still underway and they will be filing supplementary chargesheet and it is duly accepted without any further direction by the Court. The statements which had been filed alongwith the third chargesheet had to be taken cognizance of by the learned Trial Court as it was still at the

stage of considering charge and filing supplementary chargesheet. The right to file supplementary chargesheet was neither closed nor could it have been anyway in view of the law as it stands today. Whether the filing of the statements alongwith the third chargesheet was an afterthought or were untrue could not have been decided or adjudicated upon by the learned Trial Court at the stage of charge itself.

39. *It should not have escaped by the parties as well as the Court that the investigating agency had yet not concluded its investigation, the FSL report was still awaited and that the statements of the witnesses were still being recorded by the police. The Court could have asked the investigating agency to inform it as to when they will conclude the investigation against the present accused persons.*

40. *As per Section 173(8) Cr. PC, there is no bar for the police to file a supplementary chargesheet. In the present case, the second supplementary chargesheet already stood accepted wherein it was clearly mentioned that the third chargesheet will be followed and it was duly accepted by the learned Trial Court. The third chargesheet could not be discarded in law.*

41. *However, as far as propriety of doing so, when arguments on charge had been part heard is concerned, this court also hold a view that at the stage of framing of charge, the Courts may put a question after filing of the chargesheet and before hearing arguments, and the prosecution will inform the Trial Courts as to whether the case was ripe for hearing arguments on charge and as to whether the chargesheet has been finally filed against the accused, against whom a Court is proceeding to hear arguments on charge.*

5. On perusal of first chargesheet in this case, I find that it was mentioned that two complaints as made by Poonam Johar and Rinku were clubbed for investigation in this case on 30.03.2020, on the grounds of place of occurrence of both the incidents being nearby. But at the same time, it was reported that complainant Rinku was not found despite making investigation from neighbours and nearby places. Meaning thereby that IO could not find anything at the time of filing first chargesheet to assume that the incident allegedly taken place with Rinku was caused by the accused persons, who were being chargesheeted through first

chargesheet. There was no basis for the IO to club investigation report on the complaint of Rinku in the present case, which was based on the complaint of Mr. Narender Kumar. It was so done under this FIR, on the basis of unfounded assumptions that same would have been caused by same set of accused persons. Thus, when nothing was found by IO while filing the first chargesheet, in respect of complaint made by Rinku, then his complaint should have been separated from this case for registration of separate FIR and filing report of investigation as per outcome of that investigation. In this respect, it is also relevant to mention here that in the complaint of Rinku I find addition of date and time of 07:30 PM with a different pen and ink. It is well apparent that it was not so mentioned by the complainant Rinku at least at the time of making this complaint. In what circumstances and on what basis such additions were made in this complaint, is nowhere explained in any of the chargesheets including the latest supplementary chargesheet.

6. With the supplementary chargesheet-2, a statement of Rinku dated 12.09.2023 as recorded u/s. 161 Cr.P.C. by ASI Gajraj Singh, has been filed. In this statement also there is modification in the time of alleged incident to show that it had taken place between 7-8 PM. At the same time this statement further shows that the complainant Rinku though claimed that he was surrounded by a mob of 50-60 persons, but he stated that he did not know anyone of them, who looted his e-rickshaw with materials there upon and thereafter, set it on fire. Thus, once

again no one has been identified as culprit behind this particular incident allegedly taken place with Rinku.

7. In that situation, there is no basis to raise presumption that the accused persons, who were otherwise identified as culprits behind the incident taken place at the premises of first complainant Narender and another complainant Poonam Johar, were the culprits behind this incident also. In fact, I find that in the name of investigating this complaint, a half-hearted attempt has been made only to show the completion of the investigation. This complaint is, therefore, not to be entertained in the present case.
8. I also find that the statement of W/SI Deepika and Ct. Sarnam were recorded by ASI Gajraj Singh without seeking any permission from the court u/s. 173(8) Cr.P.C. The judgment relied upon by Id. Special PP refers to a case where supplementary chargesheet was filed before the consideration on the point of charge. However, same is not the case herein. In this case the charges were decided way back long, at the instance of prosecution itself, on 03.12.2021. Charges were framed accordingly and trial was also started. Thereafter, 12 witnesses have already been examined. It is beyond understanding that for what purpose the complaint of Rinku was shown to be completely investigated through this supplementary chargesheet. Because, the IO did not have any material to say that the accused persons who are facing trial in this case had caused this additional incident as well in the same continuity of action. It is

not even the conclusion mentioned in the latest supplementary chargesheet-2.

9. As far as further investigation is concerned, by virtue of Section 173(8) Cr.P.C. investigating agency has the power to conduct the same. As observed by Supreme Court in **Ram Lal Narang v. State (1979) 2 SCC 322**, which was so affirmed subsequently by a larger bench in **Vinubhai Haribhai Malviya vs. State of Gujarat, (2019) 17 SCC 1**, after filing a report of investigation, police is required to obtain permission from the court in order to conduct such further investigation.
10. Thus, the right of investigating agency to further investigate a case u/s. 173(8) Cr.P.C. does not remain absolute right, especially after filing of chargesheet and charges being decided by the court. Once a trial has begun, it has to be shown that the requisite action is necessary in view of some past left-over job. On the basis of such reasons the investigating agency is duty bound to seek permission from the court, to further investigate on those lines. It is only in respect of some pending reports/sanction orders, where the permission of the court to file the same at subsequent stage may not arise.
11. In view of my forgoing discussions, it is concluded that the complaint of Rinku cannot be clubbed in this case. Hence, SHO is directed to take it back and register a separate case thereupon. Ld. Special PP submitted that in order to do complete justice with Rinku, it was necessary to investigate that complaint. However, that was not done properly rather a final report of investigation

CNR No. DLNE01-000454-2021
State v. Mohd. Shahnawaz Etc.
SC No. 45/21; FIR No. 142/20, PS Gokalpuri

was filed in haste, without carrying out complete investigation. Therefore, this chargesheet shall be entertained only in respect of sanction u/s. 196 Cr.P.C. Though, permission was not granted in respect of documents like duty roster and DD entry no.25-B, however, finding same to be relevant for this case, they are taken on record with statement of Ct. Sarnam and W/SI Deepika. However, a warning is recorded for SHO and IO that they must follow the law u/s. 173(8) Cr.P.C. before indulging into any further investigation after filing of the chargesheet before the court, in a case. Copy of this order be sent to SHO for compliance.

Ordered accordingly.

Announced in the open court **(PULASTYA PRAMACHALA)**
today on 09.10.2023 **ASJ-03(North East)**
(This order contains 7 pages) Karkardooma Courts/Delhi